

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY AND OBEY GIANT  
ART, INC.,

Plaintiffs,

v.

THE ASSOCIATED PRESS,

Defendant and Counterclaim  
Plaintiff,

v.

SHEPARD FAIREY, OBEY GIANT ART,  
INC., OBEY GIANT LLC, STUDIO  
NUMBER ONE, INC., and ONE 3 TWO,  
INC. (d/b/a OBEY CLOTHING),

Counterclaim Defendants.

ECF

Case No. 09-01123 (AKH)

**COUNTERCLAIM DEFENDANT ONE 3 TWO, INC.'S NOTICE  
OF MOTION IN LIMINE NO. 1 TO EXCLUDE ALL EVIDENCE  
AND TESTIMONY CONCERNING INDIRECT PROFITS**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that upon the accompanying memorandum of law, Counterclaim Defendant One 3 Two, Inc. d/b/a Obey Clothing (“One 3 Two”) will move, before the honorable Alvin K. Hellerstein, United States District Judge at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., Courtroom 14D, New York, New York 10007, on March 16, 2011 at 10:00 a.m., to exclude evidence and argument relating to communications by One 3 Two and Fairey (and his affiliated companies) concerning indirect profits (*i.e.*, profits that were not derived from the sale of the merchandise featuring the allegedly infringing Obama Image created by Shepard Fairey). One 3 Two moves *in limine* to exclude this evidence on

grounds that Plaintiff The Associated Press (the “AP”) has failed to meet its threshold burden of establishing a causal link between the sale of the t-shirts and sweatshirts featuring the Obama Image (the “Obama Merchandise”) and the sales of other One 3 Two merchandise, which includes accessories, jewelry, and handbags which have no identifiable artwork by Fairey, among other things. Any such evidence in support of indirect profits is accordingly inadmissible because it is irrelevant under Federal Rules of Evidence 401 and 402 and the risk of unfair prejudice substantially outweighs any probative value under Federal Rule of Evidence 403.

Dated February 25, 2011  
Los Angeles, California

Respectfully submitted,

By: /s/ Robyn C. Crowther

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One 3 Two, Inc. (d/b/a Obey Clothing)*